

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2765 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUMITRABEN NATVARLAL RAVAL

Versus

DIRECTOR OF SOCIAL DEFENCE

Appearance:

MR DT SONI for Petitioner

MS PS PARMAR for Respondent No. 1

MR SM MAZGAONKER for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/06/97

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The learned counsel for the petitioner has produced on record of this file, the order of the Government dated 23rd February 1996, under which the services of the petitioner were ordered to be regularized with effect from 1.5.84. This document has been shown to

the learned counsel for respondent No.1 and she has not disputed the same. With the consent of parties, this document is taken on record.

3. It is not in dispute that names have been called by respondent No.2 herein for making appointment on the post of Assistant Teacher in the institution from Employment Exchange and name of petitioner has been sent by Employment Exchange to the institution for consideration. The selection committee has considered the cases of all the candidates whose names have been sponsored by Employment Exchange and the petitioner was selected for appointment on the post of Assistant Teacher in the institution. The petitioner, earlier to this selection, was appointed in the institution on temporary basis on the said post. The institution thereafter sent the proceedings of selection for approval of the Government, the respondent No.1 herein. The appointment has been approved for a short period as the Government was of opinion that on the post of Assistant Teacher in the institution, which is an institution for Blind girls, appointment should be given to physically handicapped candidate only.

4. This writ petition has therefore been filed by the petitioner before this Court and this Court has protected the petitioner by grant of interim relief in terms of para 16(d). So it is a fact that for all these years, the petitioner is working as Assistant Teacher in the institution. The institution has recommended the name of petitioner for approval of the Government on the post of Assistant Teacher. From the submissions made by learned counsel for respondent No.2 it comes out that the institution has no objection in case the appointment of petitioner is approved.

5. The learned counsel for the respondent-State has given out that the institution is for blind girls and as such, the Government is perfectly justified to insist for appointment of physically handicapped person on the post in the said institution. The learned counsel for the petitioner made a reference to the Resolution of the Government and contended that no such condition has been prescribed therein for appointment of physically handicapped candidate only in the institution. Otherwise also, the contention of learned counsel for the petitioner is that in case the contention of learned counsel for respondent No.1 is accepted to be a legal one, it will be a case of 100% reservation of the post in the institution for physically handicapped persons and 100% reservation is not valid. However, I do not

consider it to go on this question on merits as each matter has to be decided on the basis of its own facts. The petitioner has been appointed after selection and that appointment has also been approved by the Government though a condition has been put that it is approved for a short term. So it is not case where the petitioner has been entered in service by way of back door entry. Irrespective of the nature of appointment of the petitioner, she has been later on selected on the said post by selection committee, and for all these years, i.e. about thirteen years, she is working in the institution to the satisfaction thereof. In view of this fact, I do not consider it to be appropriate to dislodge the petitioner from the institution.

6. In the result, this Special Civil Application succeeds and the orders annexure 'D' and 'E', impugned in this Special Civil Application, are quashed and set aside. Rule is made absolute in aforesaid terms with no order as to costs. However, it is made clear that decision of this Court may not be taken to be a decision as if all the posts in the institution should be filled in only by candidates other than physically handicapped candidates. It is for the Government and the institution to decide to fill in the future post from physically handicapped candidates or not, as this matter has been decided on the basis of its own facts.

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